



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166648

PRELIMINARY RECITALS

Pursuant to a petition filed June 11, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 09, 2015, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's PA request for therapy evaluations.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Laura Ronowski

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County. He is 3 years old and lives with his family.

2. The Petitioner's primary diagnoses include autism, apraxia of speech, receptive/expressive disorder, oral phase dysphagia.
3. At the time of the PA request in April, 2015, the Petitioner received special education and speech language therapy services in the [REDACTED].
4. The Petitioner received Birth – 3 services from September, 2013 – May 5, 2014. In May, 2014, the Petitioner's mother opted to receive private therapy services at Therapies Plus.
5. A PA was approved for the Petitioner to receive therapy services at Therapies Plus for the period of May 5, 2014 – October 27, 2014, 2x/week for 26 weeks.
6. In April, 2015, a re-evaluation of the Petitioner was conducted by Therapies Plus for speech sound language comprehension and a separate evaluation for swallowing function.
7. On or about April 15, 2015, a PA was submitted by Therapies Plus requesting speech language therapy services for the Petitioner 2x/week for 26 weeks, speech sound language comprehension evaluation, swallowing function evaluation, and oral function therapy 2x/week for 26 weeks.
8. On May 14, 2015, the agency issued a notice to the Petitioner denying the requested services.
9. On June 11, 2015, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.

DISCUSSION

Speech and language therapy is an MA-covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, §DHS 107.18(2). In determining whether to approve such a therapy request, the agency employs the generic prior authorization criteria found at §DHS 107.02(3)(e). Those criteria include the requirements that a service be medical necessary, appropriate, and an effective use of available services. Included in the definition of “medically necessary” at §DHS 101.03(96m) are the requirements that services not be duplicative of other services, and that services be cost effective when compared to alternative services accessible to the recipient. When speech therapy is requested for a school age child in addition to therapy provided by the school system, the request must substantiate the medical necessity of the additional therapy as well as the procedure for coordination of the therapies. Prior Authorization Guidelines Manual, Speech Therapy, page 113.001.03. It is up to the provider to justify the provision of the service. §DHS 107.02(3)(d)6.

In this case, the Petitioner's mother testified at the hearing that she no longer wished to contest the agency's denial of the speech language therapy services and the oral function therapy services. She does ask for a review of coverage of the speech sound language comprehension evaluation and the swallowing function evaluation.

An evaluation must still meet the definition of “medically necessary” in order to be a covered service. If the reason for referral or the requested therapy services is not medically necessary or is noncovered, the evaluation will not be reimbursed.

Evaluations that are not considered medically necessary include situations in which there has not been a significant change to the therapy POC goals. ForwardHealth Handbook, Topics #4571 and 2746.

In this case the therapy services were denied for several reasons including a lack of documented progress in therapy, duplicative services, sufficiency of school services, and no documented medical condition for oral function therapy.

The Wisconsin Administrative Code at Section DHS 107.18(3)(e) states that therapy services shall not be approved if a member has shown no progress toward meeting or maintaining established and measureable

treatment goals over a 6 month period. The agency compared the speech language therapy goals established on May 5, 2014 for the Petitioner and the goals established on April 13, 2015. The agency also reviewed the IEP goals. It noted that only one goal was listed as being met over the course of a year of therapy. It further concluded that the documentation supplied indicates the school is addressing the same goals as that of the therapist.

Prior hearing decisions have held consistently that where speech therapy is provided in school, it would not be cost effective for MA to cover private therapy. If the private therapy covers a situation that school therapy does not address, it has been found that the services are not duplicative. See, for example, the final Decision in DHA Case No. MPA-48/16180, (Wis. Div. Hearings Appeals, August 21, 1997) where the evidence showed that the petitioner had a unique oral deficiency that the school therapist was not trained to address. Also see the Decision in DHA Case No. MPA-51/41838 (Wis. Div. Hearings Appeals, November 18, 1999), where the school therapist was working on building vocabulary while the private therapist was working on the physical process of vocalizing sounds.

Based on a comparison of the therapy goals, I conclude that the agency properly determined that there is insufficient documentation of progress over the course of a year in meeting therapy goals and that the goals of the private therapist and school therapist are sufficiently similar to be duplicative. Therefore I conclude the agency properly denied the speech language therapy services and the speech sound language comprehension evaluation.

With regard to the swallowing function evaluation, a member must have an identified physiological swallowing and/or feeding problem for therapy services to be considered medically necessary. There has been no documentation submitted on behalf of the Petitioner to demonstrate that the Petitioner has a physiological swallowing problem. There is an issue of the Petitioner being a picky eater and some aversion to certain textures. However, there is no indicating of a physiological abnormality in his ability to chew or swallow. Therefore, I conclude the agency properly denied oral function therapy services and also properly denied the evaluation.

CONCLUSIONS OF LAW

The agency properly denied the PA request for therapy services and evaluations.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

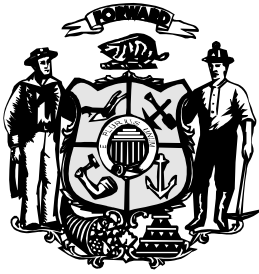
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of September, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 8, 2015.

Division of Health Care Access and Accountability